

AMENDING PATENT LAW.

JUNE 8, 1898.—Referred to the House Calendar and ordered to be printed.

Mr. HICKS, from the Committee on Patents, submitted the following

REPORT.

[To accompany H. R. 7871.]

The Committee on Patents, to whom was referred the bill (H. R. 7871) revising and amending the statute relating to patents, submit the following report:

The Fifty-fourth Congress amended section 4887 of the Revised Statutes. Such amendment as it originally passed the House of Representatives was made to take effect at once. The Senate added an amendment extending the time to January 1, 1898. Such Senate amendment was concurred in by the House. It now transpires that the phraseology used unintentionally failed to repeal the old section 4887, so that there are now on the statutes two sections 4887 of the Revised Statutes.

The purpose of the present bill is to correct this error by repealing the old section and thus leaving only one section 4887 of the Revised Statutes.

It is not intended to modify the law as it now stands, as provided by the amended section 4887, respecting the provision that if an application be filed in this country subsequent to December 31, 1897, and more than seven months after the filing of a foreign patent for the same invention, by the same inventor or his legal representatives or assigns, no patent shall be granted thereon; nor is it intended to enlarge the term of any patent granted prior to the passage of the proposed act beyond that term which it would have under the law at the time of its issuance.

The bill which became a law on March 3, 1897, as it passed the House of Representatives, contained one section, numbered section 3, which modified section 4887 of the Revised Statutes. This section 3 repealed that portion of section 4887 of the Revised Statutes which declared that where an invention had been previously patented in a foreign country the United States patent should be so limited as to expire at the same time with the foreign patent, or if there was more than one, at the same time with the one having the shortest term. Under that section, had it remained as it passed the House, any patent granted subsequent to the date of the passage of the act would have been relieved from the operation of the clause of the old section 4887 limiting the term of United States patents by prior foreign patents.

The Senate added a general clause providing that section 3 and other sections should not apply to any application filed prior to January 1, 1898, or to any patent issued on such an application. This change left the old section 4887 in full force and effect to limit the terms of patents which should issue upon applications filed prior to January 1, 1898, and thus unintentionally created two sections 4887 of the Revised Statutes, existing at one and the same time.

No sufficient reason can be given for refusing to applications filed prior to January 1, 1898, the same exemption from limitation by foreign patents that is given by the act of March 3, 1897, to applications filed subsequent to January 1, 1898. While it has never been the policy of the Government to change the terms of *grants already made*, it may fix the terms of patents to be granted, irrespective of the time when the applications were filed.

The limitation of the term of American patents by foreign patents is a great hardship. It was so recognized by the adoption of the amended section during the Fifty-fourth Congress. The applicant in this country can not control the time when his patent shall issue. If an applicant who filed his application prior to January 1, 1898, is unfortunate enough to be involved in an interference, which may tie up his application for an indefinite time, he may be obliged to forego obtaining patents abroad. If he files a single application abroad, and the foreign patent issues before he can obtain his United States patent, the term of his patent in this country is limited by the foreign patent. Now, an opponent in an interference proceeding, finding that the true inventor has taken patents abroad, though he may not be able to defeat the true inventor, may delay the issuance of the patent for years, and when the true inventor finally obtains his patent it is for a term which may be limited to but a few years.

As to all applications filed on or after January 1, 1898, the opportunity for this is entirely wiped out by the act approved March 3, 1897. It is but fair and just for the United States to relieve present as well as future applicants from this hardship, and no opposition can be made to it except by those who are seeking to defeat rights to patents by delaying their issuance through dilatory proceedings in interferences.

It is an absurdity and creates confusion to have existing at one and the same time two sections 4887 of the Revised Statutes. The old section should be repealed, as it was intended to have been repealed at the time of passage of the amended section. The provisions of the present bill are confined solely to this one object.

Your committee recommend that the bill do pass.